IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 126 OF 2006

Kum. Sawanta Tatya Bhande (Patil) .....Petitioners.
vs.
Smt. Kamalabai Tatya Bhande (Patil) and Ors. .....Respondents.

A.M. Kulkarni for the petitioner.
T.S. Ingale for respondent no.1.

CORAM: S.B. MHASE, J.

DATED: 2ND MAY, 2006.

P.C. :

1. Heard both the sides.

2. The order dated 30.9.2005 passed below Exhibit 12 in a Regular Civil Appeal No. 115 of 2005 requesting to grant an interim stay to the decree passed in R.C.S. No. 32 of 1997 pending the First Appeal No. 115 of 2005. The decree for partition and possession has been passed on 21.4.2005 by the Civil Judge, Junior Division.

The said decree has been challenged by the defendant no.1 by filing Regular Civil Appeal No. 115 of 2005. Alongwith the said appeal the application Exhibit 12 was submitted making a prayer that during the pendency of the appeal the execution of the decree be stayed. That application is rejected, and therefore the petition is filed.

3. Learned counsel for the petitioner submitted that during the pendency of the First Appeal, it is necessary to maintain the subject matter of the suit and if the decree is executed the appeal becomes infructious. Learned counsel for the respondent also pointed out that in R.C.S. No. 111 of 1995 which was filed by the present petitioner for perpetual injunction the decree has been passed dismissing the said suit and directing the parties to maintain status-quo. Learned counsel for the petitioner submitted that he has no objection in proceeding with the execution of the decree upto the stage of possession but only the act of possession be

kindly stayed. Learned counsel for the respondent initially disagreed but ultimately submitted that the appeal may be expedited and it shall be disposed off within a period of three months. Therefore the following order is passed.

> . The execution of the decree dated 21.4.2005 passed in R.C.S. No. 32 of 1997 shall proceed upto the stage of delivery of possession. However the executing court shall not deliver the possession of the property. The petitioner is hereby directed to submit the paper book within a period of one month from today before the District Judge and the District Judge shall dispose off the appeal within a period of three months from today.

4. With this observation the petition is disposed off.

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